

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth St., Suite 4T20
Atlanta, Georgia 30303-8909



June 21, 2007

Mr. Glenn Jennings
Commissioner
Department for Medicaid Services
Sixth Floor
275 East Main Street
Frankfort, Kentucky 40621-0001

Attention: Kevin Skeeters

RE: Kentucky Title XIX State Plan Amendment, Transmittal #07-002

Dear Mr. Jennings:

We have reviewed the proposed amendment to the Kentucky Medicaid State Plan that was submitted under transmittal number 07-002. This amendment implements Section 6032 of the Deficit Reduction Act of 2005. The amendment specifies the method by which the State will ensure an entity is in compliance with the "Employee Education about False Claims Recovery" provision.

Based on the information provided, we are pleased to inform you that Medicaid State Plan Amendment 07-002 was approved on June 19, 2007. The effective date for this amendment is January 1, 2007. We are also enclosing the approved HCFA-179 and plan pages.

If you have any questions or need any further assistance, please contact Maria Donatto at (404) 562-3697.

Sincerely,

A handwritten signature in black ink that reads 'Renard L. Murray'. The signature is written in a cursive, flowing style.

Renard L. Murray, D.M.
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. TRANSMITTAL NUMBER:
07-002

2. STATE
Kentucky

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE
January 1, 2007

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
Deficit Reduction Act of 2005 [Section 1937 of the Social Security Act]

7. FEDERAL BUDGET IMPACT:
a. FFY 2007 - budget neutral
b. FFY 2008 - budget neutral

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Page 79y-79z
Attachment 4.42-A page 1

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

Same

10. SUBJECT OF AMENDMENT:

This plan amendment implements section 6032 of the Deficit Reduction Act of 2005. This provision establishes section 1902(a)(68) of the Social Security Act, and relates to "Employee Education About False Claims Recovery."

11. GOVERNOR'S REVIEW (Check One):

- ☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED: Review delegated
to Commissioner, Department for Medicaid
Services

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME: Glenn Jennings

14. TITLE: Commissioner, Department for Medicaid Services

15. DATE SUBMITTED: March 30, 2007

16. RETURN TO:

Department for Medicaid Services
275 East Main Street 6W-A
Frankfort, Kentucky 40621

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

March 30, 2007

18. DATE APPROVED:

June 19, 2007

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

January 1, 2007

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

Renard L. Murray, D.M.

22. TITLE: Associate Regional Administrator
Division of Medicaid & Children's Health Opns

23. REMARKS:

Approved with the following change to Item 9 as authorized by the SA on
e-mail dated 6-21-07: Item 9 changed to read "NEW".

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kentucky

Citation
1902(a)(68) of
the Act,
P.L. 109-171
(section 6032)

4.42 Employee Education About False Claims Recoveries

- (a) The Medicaid agency meets the requirements regarding establishment of policies and procedures for the education of employees of entities covered by section 1902(a)(68) of the Social Security Act (the Act) regarding false claims recoveries and methodologies for oversight of entities' compliance with these requirements.

(1) Definitions.

(A) An "entity" includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an "entity" (e.g., a state mental health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity.

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made by January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

(B) An "employee" includes any officer or employee of the entity.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Kentucky

- (C) A "contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.
- (2) The entity must establish and disseminate written policies which must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. The entity need not create an employee handbook if none already exists.
- (3) An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in section 1902(a)(68)(A). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.
- (4) The requirements of this law should be incorporated into each State's provider enrollment agreements.
- (5) The State will implement this State Plan amendment on January 1, 2007.
- (b) ATTACHMENT 4.42-A describes, in accordance with section 1902(a)(68) of the Act, the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis.

**Method for establishing Employee Education
Of False Claim Policies and Procedures**

1. The Department will query the Decision Support System (DSS) for FFY 2006 Fee-for-Service and Encounter Data as of January 1, 2007 to identify entities for the purposes of section 6032 of the Deficit Reduction Act of 2005 with distinct Federal Employer Identification Number (FEIN) receiving at least \$5,000,000.
2. Each entity from the query in step 1, will be sent a letter reminding them that the Medicaid provider agreement requires the entity to comply with all applicable State and Federal laws and advising them that the Deficit Reduction Act of 2005 section 6032 contains a new requirement that must be met. Any entity paid through the Medicaid FMAP signs the aforementioned provider agreements in order to receive a provider number and the ability to bill. This includes Passport, Transportation Brokers, and other state agencies. The letter will include a form that must be signed and returned certifying that they meet the following requirements from section 1902(a)(68) of the Social Security Act:
 - A. Establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs(as defined in section 1128B(f));
 - B. include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and
 - C. include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse;
3. The entities will attach relevant documents to the response. Relevant documents include but are not limited to policy memos, employee handbook, and any document that demonstrate how the entity satisfies the requirements of 1902(a)(68) of the Social Security Act. Responses will be due to the Department by September 1, 2007. The response can be returned by the entity identified by the distinct FEIN, or the entity can elect to have a third party return the response, but the third party must state that they are representing the entity identified by the distinct FEIN.
4. The Department will evaluate the entities responses, and certify the response as valid or state the reasons the conditions were not met in a response back to the entity by December 31, 2007.
5. For future years beginning with FFY 2007, the following deadlines will apply in the given year:
 - A. Entities meeting the same criteria in step 1 except for the respective FFY, and the data will be as of January 1 following the end of the respective FFY will be sent the entity letters from step 2 by March 31 of the respective year;
 - B. Entity response to the letter will be due by June 30 of the respective year; and
 - C. The Department will send the response to the entity by September 30 of the respective year. The Department letter will validate the entities response' or state the reasons the conditions were not met.